91-1552

Supreme Court, U.S.
FILED
MAR 27 1992
OFFICE OF THE CLERK

CASE NO.:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

CHARLES E. COLLINS, III
Petitioner

v.

UNIFIED COURT SYSTEM OF
NEW YORK, et al.
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Do judges have judicial immunity for their actions when the State Constitution, state statutes and case law specifically deprive them of jurisdiction? Are county employees liable for their actions when they conspire with attorneys to prejudice and/or defeat a litigants case? Does the state legislature have the authority to change the jurisdiction and composition of a constitutional court without amending the State Constitution? Can the family court limit and then deny a non-custodial parent of visitation with his children when there has **never** been a petition filed with any court to limit or deny him visitation? Does a litigant, facing incarceration, have a Constitutional right to have the court room open to the public and news media?

LIST OF ALL PARTIES

I certify that the following comprise all interested persons known to Petitioner:

Charles E. Collins, III, Petitioner
Pro se litigant

Respondents

Unified Court System of New York,
Judge L. Foster James,
Judge Stephen A. Ferradino,
Judge J. Raymond Amyot,
Judge John A. Simone, Jr.,
Judge John T. Casey,
Judge Ann T. Mikoll,
Judge Jan H. Plumadore,
Judge John Austin,
Hearing Examiner John J. Warner, Jr.,
Mary Ellen Clerkin,
Susan P. Janczak,
Saratoga County Family Court
Attorney: New York State Attorney
General Robert Abrams
Albany, New York

Leo M. Casey,
Arlene M. Palumbo,
Saratoga County Support Collection Unit
Attorney: Courtney W. Hall
Saratoga County Attorney
Ballston Spa, New York

Douglas C. Mills
Attorney: Douglas C. Mills
Saratoga Springs, New York

Nicholas D. Morsillo,
Arlene M. Carella,
Nicholas D. Morsillo Law Firm
Attorney: James Dixon
Schenectady, New York

Michael Catalfimo,
Catalfimo & Bulger
Attorney: Michael Catalfimo
Greenwich, New York

Philip H. Gitlen,
John P. Stockli,
Kathryn Hart,
Whiteman, Osterman & Hanna
Attorney: Scott Bush
Roche, Corrigan, McCoy & Bush
Albany, New York

Jerome K. Frost,
Frost & Donahue
Attorney: Jerome K. Frost
Troy, New York

Dianne N. Freestone,
Grogan, Pentkowski, Pastore & Freestone
Attorney: David H. Pentkowski
Clifton Park, New York

Non- Party

Governor Mario Cuomo
Albany, New York

Charles E. Collins III

CHARLES E. COLLINS, III
Petitioner - Pro se

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OFFICIAL COURT OPINIONS

The United States District Court issued its Decision and Order signed on June 14, 1991 and entered on June 17, 1991, (91-CV-0349) determining the judges had judicial immunity for their actions, that Petitioner failed to allege specific facts sufficient to indicate a deprivation of rights has occurred, and the awarding of sanctions against Petitioner.

The United States District Court issued its Order dated August 6, 1991 (91-CV-0349) stating the amount of money Petitioner was to pay to the different defendants for attorney fees.

The United States District Court issued an Order dated August 9, 1991 (91-CV-0349) directing the Clerk's Office of the Northern District of New York to accept no further letters,

documents, or papers for filing and to accept no further applications of any kind or nature from Petitioner until he had complied with the Court's Order dated August 6, 1991.

The United States Court of Appeals for the Second Circuit affirmed the District Court's Decision and Order on February 27, 1992 (91-7703).

STATEMENT OF JURISDICTION

This Petition for a Writ of Certiorari is sought from a final Order of the United States Court of Appeals, Second Circuit, issued February 27, 1992, (91-7703) and is herein filed within the required ninety (90) day period.

This court has jurisdiction pursuant to 28 U.S.C. Section 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. CONST. Art. VI, Section 2.

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Petitioner is also relying upon U.S. Constitution Amendments I, V, VI, and XIV as well as Civil Rights Statutes Title 42 U.S.C. Sections 1983 and 1985.

See, APPENDIX EXHIBIT 9

STATEMENT OF CASE

This is an appeal from a final order signed by the Second Circuit Court of Appeals on February 27, 1992 affirming the decision and order of the District Court entered June 17, 1991 determining that the judges had judicial immunity for their actions, that Petitioner failed to specifically state the deprivation of rights and the awarding of sanctions against Petitioner. District Court had jurisdiction pursuant to 28 U.S.C. 1343.

FACTS

The family court judges knew that they lacked jurisdiction over the issues of custody, visitation and support between Petitioner and Ms Carella as there has never been a referral of the issues to the family court from the supreme court as required by the New York State Constitution. Also, at an EBT held

on April 19, 1989 Ms Carella, when asked, did not deny that she was having ex parta communications with Judge James.

Petitioner and Ms Carella were married on June 28, 1975 and had three children of the marriage. On October 3, 1980 they entered into a Separation Agreement which gave Ms Carella custody of the children and visitation rights to Petitioner as well as providing for support of Ms Carella and the children. On March 27, 1981 they entered into an Amended Separation Agreement concerning support. On July 27, 1981 Judge Amyot signed a New York State Judgment of Divorce which was entered on August 3, 1981 which incorporated but did not merge the agreements.

The family court proceeding was begun in February 1985 when Petitioner's attorney filed a petition for Petitioner to have custody of his children alleging

the deprivation of his visitation rights and that Ms Carella was not living with the children.

On April 9, 1985 Judge James issued a Temporary Order of visitation which limited and changed the visitation terms of the Supreme Court decree. Petitioner filed violation of visitation petitions with the family court on August 20, 1985, August 14, 1986, October 27, 1986, January 19, 1987, February 24, 1987, August 19, 1987, April 30, 1990, and October 9, 1990. The Court again changed Petitioner's visitation rights on April 15, 1987 and on September 13, 1991 Judge Austin suspended Petitioner's visitation rights even though there has never been a petition filed in any court to limit or deny Petitioner his visitation rights. Judge James on March 25, 1986 Ordered that the custody of the children remain with the

mother, Ms Carella.

In 1984 Plaintiff purchased a house with mother, Mrs King, and her husband with each owning a 1/3 interest. On April 22, 1986 Judge James gave Ms Carella exclusive possession of the property. The King's were not a party to the action and therefore the family court lacked personal jurisdiction over them. Judge James was not authorized, as a family court judge, to determine possession or title of real property. Supreme Court Judge Plumadore specifically so ruled on December 11, 1989.

On April 26, 1985 Judge Ferradino issued an Order to Show Cause against Petitioner for violation of support based upon the Supreme Court Decree. On May 7, 1985 Judge Ferradino issued a Temporary Order of support and maintenance which changed the terms of the Supreme Court Decree.

On April 22, 1986, after awarding Ms Carella exclusive possession of the house, Judge James transferred the issue of support to the Schenectady County Hearing Examiner.

In November of 1986 Petitioner sold his 1/3 interest in the house to his mother and received credit for monies owed to her.

March 5, 1987 Hearing Examiner Warner issued his decision and order which changed the terms of the Supreme Court Decree.

April 7, 1987 and April 8, 1987 Judge James held a trial to determine if Petitioner had violated the Family Court orders. As documented by the transcripts, Petitioner was not informed of his rights as required by both state and federal law including his right to counsel, was not allowed to

cross-examine Ms Carella on her testimony, was allowed only to present evidence and documentation for the period of October 3, 1986 to April 7, 1987 while Mr Morsill and Judge James questioned Petitioner and Ms Carella covering the period of 1981 to April 7, 1987, and Petitioner was not allowed to object to the questions being asked of him, etc.

On April 15, 1987 Judge James sentenced Petitioner to jail.

June 18, 1987 Judge James held a hearing for violation of support by Ms Carella and a violation of visitation by Petitioner Judge James refused to allow Petitioner to be heard concerning the violation of his visitation rights stating: "I don't want to hear from you, Mr Collins, its not fair or reasonable." He then transfers the issue of support to Schenectady County Hearing Examiner.

September 17, 1987 Mr Warner issued his Finding of Fact and recommended that Petitioner be sentenced to jail for violation of support. Testimony showed that Petitioner earned $400.00 per week with a net of $293.00 or $1259.00 per month. He was ordered to pay $725.00 mortgage, $284.00 support, $60.00 arrears, $150.00 for utilities for a total of $1219.00. This left Petitioner $40.00 to live on per month and does not include past due medical bills, future medical bills, medical insurance and past due electric bills Petitioner was ordered to pay.

January 25, 1988 Surrogate Court Judge Simone sentenced Petitioner to jail for violation of support.

January 26, 1989 the Appellate Court ruled that Petitioner could not afford to pay the amount ordered by the family court and they could not rely on Peti-

tioner's mother's assets in determining his support obligation.

July, 1989 Mrs King sued Petitioner and Ms Carella in Supreme Court in order gain possession of the real property.

September 8, 1989 Judge James ordered Petitioner to pay a flat $120.00 per week and specifically stated that his potential was $20,000.00 per year. Judge James then made the order retroactive back to December 1987 as required by FCA § 449 without giving Ptitioner full credit for support paid as required. This placed Petitioner over $4,000.00 in arrears when he should have had over a $14,000.00 credit. This was in order to prejudice the Supreme Court proceeding by giving Ms Carella a reason to claim there was a fraudulent conveyance.

In order to circumvent the Appellate Court ruling concerning Petitioner's sup-

port obligation Supreme Court Judge Plumadore on February 28, 1990 refused to give Mrs King back her property relying on Judge James' decision placing Petitioner over $4,000.00 in arrears knowing that Judge James lacked jurisdiction and Petitioner did not receive full credit for all support paid. He ruled because of the arrears, Ms Carella was entitled to claim a fraudulent conveyance. Yet, dismissing the fraud in Ms Carella receiving exclusive possession of the house. With out a hearing or a trial Judge Plumadore ruled that Ms Carella could remain in the house, holding Mrs King liable for Petitioner's support as she has to pay $850. per month mortgage on the house. Judge Plumadore has refused to hold a hearing or to set a date for interrogatories to be completed by and is refusing to allow Petitioner or Mrs King to claim the money

paid on the mortgage to be used against Petitioner's support obligation. From September 1989 to the present is 30 months. At $516.00 per month support is $15,480.00 + $4,000.00 arrears equal $19,480. Mortgage payment of $850.00 per month is a total of $25,500.00 minus support of $19,480 leaves $6,020.00 that has been over paid. Thereby, ruling Ms Carella is entitled to live in the house rent free and receive support.

April 25, 1990 Petitioner published a newspaper detailing how the family court judges had been consistently violating his rights in the court. He documented how the judges were using their positions in order to fix cases and for the purpose of extortion. All the judges, including Judges James and Ferradino, declined to sue.

April 30, 1990 Petitioner filed a

violation of visitation petition and a modification of support petition naming Ms Carella and Judges James and Ferradino as Respondents.

May 9, 1990 Judge James signs Judge Austin's name to an Order to Show Cause for violation of support, after he had been removed from the case by an Administrative Order, in order to take out retribution against Petitioner for the newspaper knowing that they could close the family court to the public and sentence Petitioner to jail.

May 25, 1990 Petitioner appeared before Judge Austin for violation of support based upon Judge James' September 8, 1989 decision. Petitioner was not informed of his rights including his right to counsel. Mr Mills was appointed as the law guardian for the children.

July 30, 1990 Judge Austin dismisses

all of Petitioner's petitions leaving only Ms Carella's violation petition. He again fails to inform Petitioner of his rights and refuses to take any action to protect Petitioner's visitation rights.

When Petitioner attempted to see his children in October 1990, Mr Mills notified him that he was not to see his children and refused to state why. No petiwas filed with the court to limit or deny Petitioner his visitation. When Petitioner went to Judge Austin, he refused to take any action or to inform Petitioner why he cannot see his children.

December 20, 1990 Mr Catalfimo was appointed by Judge Austin as Petitioner's attorney. He has also refused to take any action to find out why Petitioner cannot see his children.

August 16, 1991 Petitioner sends a letter to Judge Austin stating that he

lacked jurisdiction pursuant to the New York State Constitution, the Family Court Act and supporting case law.

August 20, 1991 Judge Austin replies stating Petitioner's arguments are "with out merit" and refuses to state upon what he based his jurisdiction as he had a personal interest in determining he had jurisdiction because of this federal proceeding which was filed on March 28, 1991. Had he ruled he did not have jurisdiction he would be holding himself as well as the other family court judges liable for their actions.

September 13, 1991 Judge Austin issued a warrant for Petitioner's arrest because he refused to participate in a trial over which Judge Austin knew he lacked jurisdiction and had a personal interest in seeing that Petitioner would not be able to argue his case before the

U.S. Court of Appeals.

ARGUMENTS

Petitioner respectfully requests that this court grant a Writ of Certiorari in this case as the United States Court of Appeals for the Second Circuit has decided a federal question in a way that conflicts with applicable decisions of this Court and other circuit courts.

The Second Circuit in declaring the judges had immunity relied on Stump v. Sparkman, 435 U.S. 349, 362-64 (1978) without addressing the issue of whether the judges were acting within the scope of their judicial authority.

Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980) at 848, 849 stated:

> ...When the Supreme Court first formulated the "clear absence" standard however, it stated that the principal of immunity applied when there was "jurisdiction of **both** subject and person." Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 352 (1872).

[10] **But when a judge knows he lacks jurisdiction, or acts on the face of clearly valid state statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost.** See Bradley v. Fisher, 80 U.S. (13 Wall) at 351 (**" when want of jurisdiction is known to the judge, no excuse is permissible"**); Turner v. Raynes, 611 F.2d 92, 95 (5th Cir. 1980) (Stump, is consistent with the view that "a clearly inordinate exercise of unconferred jurisdiction by a judge - one so crass as to establish that he embarked on it either knowingly or recklessly - subjects him to personal liability").

Dykes v. Hoseman, 743 F.2d 1488 (11th Cir. 1984) at 1495 held:

[11] **It is clear that a judge who acts in the absence of jurisdiction may be held liable for his judicial acts.** Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, (1978);

Bauers v. Heisel, 361 F.2d 581 (3rd. Cir. 1966) at 591 held:

...Because immunity is conferred on an individual solely by virtue of the office he holds, reason required us to adopt a rule which does not provide immunity for those acts which are done clearly outside the authority or jurisdiction of the office.

United States v. State of Califor-

nia, 504 F.2d 750 (1974) at 754 held:

> [3,4] ...Nevertheless the government argues that this case can be brought within the exceptions to Section 218. This contention must be considered in light of two important rules of statutory construction: 1) **jurisdictional statutes are to be strictly construed.** "[I]n construing a definite procedural provision we do well to stick close to the text and not import argumentative qualifications from broad, unexpressed claims of policy". Utah Junk Co. v. Porter, 328 U.S. 39, 44, 66 S.Ct. 889, 892, (1946); 2) **exceptions to the general provisions of a statute are also to be strictly construed.** See, United States v. First City National Bank, 386 U.S. 361(1967)

N.Y.S. CONST., Art. 6, § 1, creates the Family Court as part of the Unified Court System of New York. Art. 6, § 13(a) establishes the Family Court of the State of New York. Article 6, § 13 (b) and (c) state the jurisdiction:

> Art. 6, § 13 [Family Court established; composition; election and appointment of judges; jurisdiction]
>
> a) The family court of the state of New York is hereby established. It shall consist of at least one judge in each county....

b) The family court shall have jurisdiction over the following classes of actions and proceedings which shall be originated in such family court in the manner provided by law: ...(2) the custody of minors **except** for custody incidental to actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage; ...(4) the support of dependants **except** for support incidental to actions and proceedings in this state for marital separation, divorce, annulment of marriage or dissolution of marriage; ....

c) The family court shall also have jurisdiction to determine, with the same powers possessed by the supreme court, the following matters **when referred to the family court from the supreme court**: habeas corpus proceedings for the determination of the custody of minors; and in actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage, applications to fix temporary or permanent support and custody, **or** applications to enforce judgments and orders of support and of custody, **or** applications to modify judgments and orders of support and of custody which may be granted only upon the showing to the family court that there has been a subsequent change of circumstances and that modification is required.

The Family Court is a court of

limited jurisdiction and has power to entertain only those **applications which are specifically enumerated in the state constitution** or in appropriate statute. Roy v. Roy, 109 A.D.2d 150, (1985).

The State Constitution is specific in stating that Family Court has no authority to enforce or modify any court order concerning custody, visitation or support that has not been referred to it by the supreme court. It must also be concluded that family court cannot even enforce or modify its own orders as the State Constitution refers to "court orders" and does not differentiate between family court orders and supreme court orders.

Greene v. Greene, 32 A.D.2d 523, 299 N.Y.S.2d 85 (1st Dep't. 1969) held:

> ...The parties were divorced by decree entered in New York Supreme Court June 13, 1967. That decree makes provision for custody of the

minor children and for the father's (appellant herein) visitation rights.

[1] The Family Court has jurisdiction to determine custody of minors **only** when such jurisdiction is referred to it by the Supreme Court (New York State Constitution, Article VI, § 13, subds. b(2) and c; Section 115, subdivision (b) of the Family Court Act.)

[2] Concededly the Supreme Court did not refer the issue of visitation to the Family Court. It is therefore clear that it did not have jurisdiction to change the father's visitation rights. **The proper and only forum to petition for such a change, if warranted, is the Supreme Court.**

Family Court Act § 652 states:

Jurisdiction over applications to fix custody in matrimonial actions on referral from supreme court. (a) When referred from the supreme court to the family court, the family court has jurisdiction to determine, with the same powers possessed by the supreme court, applications to fix temporary or permanent custody and applications to modify judgments and orders of custody or visitation in actions and proceedings for marital separation, divorce, annulment of marriage ...

Harrington v. Harrington, 60 A.D.2d 982, 401 N.Y.S.2d 342, at 343 (1978):

> Under section 447, subdivision (a) of the Family Court Act family court is granted power to make an order of custody or visitation but only "[i]n the absence of an order of custody or visitation entered by the supreme court". The restriction of the power to instances where there is no order of the supreme court compels the conclusion that where there is such an order of supreme court, family court may not modify it in the absence of express permission.
>
> Inasmuch as family court lacked authority to entertain the proceeding to modify the custody and visitation provisions of the divorce decree, the order is reversed and the petition dismissed without prejudice to **commencement of an appropriate proceeding in supreme court.** The provisions for child support and counsel fees may not stand because both are predicated on the court having jurisdiction to modify the custody and visitation provisions of the decree.

The Court of Appeals has specifically so ruled in Bolatin v. Bolatin, 22 N.Y.2d 794, affg. 29 A.D.2d 534 concerning Family Court Act § 447.

Section 461(a) of the Family Court Act concerning support states:

> A separation agreement, a decree of

> separation, and a final decree or judgment terminating a marriage relationship does not eliminate or diminish either parent's duty to support a child of the marriage under section four hundred thirteen of this article. In the absence of an order of the supreme court or of another court of competent jurisdiction requiring support of the child, the family court may entertain a petition and make an order for its support.

As in Bolatin, supra and Harrington, supra, it must be concluded that where there is an order of support by the supreme court, family court does not have jurisdiction to make an order.

As Petitioner's New York State Supreme Court Divorce Decree provided for custody, visitation and support and the issues of custody, visitation and support have never been referred to the Family Court by the Supreme Court the Family Court has acted in complete absence of all jurisdiction.

The family court judges and hearing

examiner clearly knew the jurisdiction of the Family Court as defined by the State Constitution, concurring state statutes and supporting case law. Therefore, they have no excuse for violating the jurisdiction vested in the Family Court by the State Constitution.

CPLR 2221 states: Motion affecting prior order:

> (a) A motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate **or modify an order** shall be made, on notice to the judge who signed the order, unless he is for any reason unable to hear it, except that:
>
> > 1. if order was made upon default such motion may be made, on notice, to any judge of the court; and
> >
> > 2. if the order was made without notice such motion may be made, without notice, to the judge who signed it, or, on notice, to any other judge of the court.
>
> A motion made to other than a proper judge under this rule shall be transferred to the proper judge.

As Petitioner had a Supreme Court order concerning custody, visitation and support, under CPLR 2221 the family court had no authority to modify the Supreme Court Decree and should have transferred any petitions to modify the Decree to the judge who signed the Supreme Court order or to another judge of the Supreme Court.

Maestri v. Jutkofsky, 860 F.2d 50, (2nd Cir. 1988), cert. denied 109 S.Ct. 1132, 103 L.Ed2d 193 (1989) held at 52:

> [1] ...When a judge clearly lacks jurisdiction over the subject matter, "any authority exercised is a usurped authority". Bradley v. Fisher, 80 U.S. (13 Wall) 335 (1871)
>
> [3] ...Finally, Jutkofsky has not cited, nor have we found, any case in which a judge who had exercised authority outside the territory properly within his jurisdiction was nevertheless held to be entitled to judicial immunity.
>
> [4] For a judge to assume authority outside the geographic bounds of his office is the kind of clear judicial usurpation which cannot be condoned by any grant of immunity. No public

policy would be served by granting immunity for such arrogant excesses of authority.

Petitioner has alleged that Hearing Examiner Warner exceeded the geographical bounds of his authority.

Schenectady County Hearing Examiner Warner's appointment authorized him to hear only Schenectady County Family Court matters while this was a Saratoga County Family Court matter.

Family Court Act § 174 states:

> The family court in a county may for good cause transfer a proceeding to a family court in any other county where the proceeding might have been originated and shall transfer a proceeding laying venue in the wrong county to a family court in any county where the proceeding might have been originated.

The applicable venue provision, Family Court Act § 421, did not authorize the proceeding to be transferred to the Schenectady County as neither Petitioner or Ms Carella resided in Schenectady

County.

This was in Petitioner's appeal to the State Appellate Court, Carella v. Collins, 144 A.D.2d 78, (3rd Dept. 1989):

> [5] ...Family Court Act § 439 (f) provides, inter alia, that "one or more counties may agree to share the services of a full time hearing examiner or a hearing examiner may be appointed to serve within one or more counties on a part-time basis". Saratoga County Family Court referred the issues of support and maintenance to the Hearing Examiner in Schenectady County by order dated April 22, 1986. Accordingly, the Saratoga County Family Court had the authority to make the referral and the Hearing Examiner in Schenectady County had jurisdiction to determine the support issues raised in the Saratoga County Family Court proceedings.

There was no documentation before the court that there was an agreement between Saratoga County and Schenectady County to share the services of Mr Warner or that he was appointed to hear matters in any other county besides Schenectady County.

This decision ignores FCA § 174 and allows family court to transfer proceedings to any county of their choice whether or not the parties have any contact with said county.

The decision is also holding that Family Court judges can unilaterally and on their own orders make agreements between counties.

Judge Simone is a Surrogate Court Judge whose subject matter jurisdiction is to hear and determine matters concerning adoption and estates. Here, Judge Simone held a trial for violation of a Family Court support order and sentenced Petitioner to jail. Even if he had been assigned to the family court he would still have been without jurisdiction as family court has no authority to enforce a support order without a referral from the supreme court.

New York State Judiciary Law Section 14: Disqualification of judge by reason of interest or consanguinity

> A judge shall not sit as such in, or take part in the decision or, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel or in which he is interested...

Casterella v. Casterella, 1978, 65 A.D.2d 614, 409 N.Y.S.2d 548 held:

> 2. Statute requiring disqualification of judges on basis of interest or bias is jurisdictional. Judiciary Law § 14.

Cummings v. Christensen, 1981, 109 Misc.2d 255, 439 N.Y.S.2d 825 held:

> 2. Statutes requiring disqualification on the basis of interest or bias are jurisdictional in nature, and the parties may not consent that a judge sit as such on a case when the judge is disqualified by operation of a statute

In August 1991, during Petitioner's appeal to the U.S. Court of Appeals, Petitioner discovered that Judge Austin

lacked jurisdiction pursuant to the State Constitution and supporting case law. On August 20, 1991 Judge Austin in his response simply stated that Petitioner's arguments had "no merit".

Judge Austin had a direct interest in the outcome of his decision because of the federal court proceedings. Had he ruled that he lacked jurisdiction, he would be holding himself out to financial loss for his previous actions in the case.

As Petitioner has a constitutional right to a court of proper jurisdiction, he also has a Constitutional right to know what statute the Court basis its jurisdiction upon since he has provided documentation that judge did not have jurisdiction to render a decision.

Judge Austin also had a direct interest in issuing a warrant for Petitioner's arrest and suspending his

visitation rights on September 13, 1991 when he refused to participate in a proceeding in which the court knowingly lacked jurisdiction.

Had Petitioner shown up to court he faced up to six months in jail for violating the family court order for support. This would have greatly benefited Judge Austin as Petitioner would not have been able to perfect his appeal to the U.S. Court of Appeals of which Judge Austin was a defendant as were Mr Morsillo, Mr Mills, Mr Catalfimo and Ms Carella who all participated in this action against Petitioner. Issuing the warrant for Petitioner's arrest was a deliberate act to threaten, intimidate and deter Petitioner from arguing his Brief before the U.S. Court of Appeals as he could have arrested before he even got a chance to argue his Brief if he had shown up.

Judge Austin also had a personal interest in denying Mr Catalfimo's motion to withdraw as Petitioner's attorney. Had he allowed Mr Catalfimo to withdraw, he would have been forced to find another attorney to represent Petitioner which would have been hard to do since Judge Austin was clearly outside his subject matter jurisdiction. Also, had Judge Austin allowed Mr Catalfimo to withdraw, he would not have been able to continue with the case and take out retribution against Petitioner for his lawsuit in federal court and prevent Petitioner from showing up to the Court of Appeals

Petitioner faces incarceration based upon the warrant issued for his arrest and the order to show cause for violation of support as well as the loss of his visitation rights in a **closed** courtroom.

Family Court Act § 433(a) states

that "the court may exclude the public from the court room in a proper case". This is unconstitutionally vague in that there is no definition of a "proper case" nor are there any rules which state under what circumstances a defendant can demand to have the court opened. The law does not require that all family court cases be closed - only that the family court "may" close the court and that is at the direction of the judge. The Petitioner has clearly argued in his complaint that Judge Austin lacks jurisdiction, that he was being denied his Sixth Amendment right to assistance of counsel, to call witnesses, his right to defend himself in court, etc.

On June 5, 1990 Petitioner filed a petition, as a defendant facing incarceration, to have the court room open to the public. TV station WRGB, Channel 6, also

filed a motion to be able to sit in on the proceeding because of Petitioner's newspaper articles. Judge Austin declined to open the court room and gave no reason why it was to remain closed. This way the judges can take out retribution against Petitioner for exercising his First Amendment right to freedom of the press.

The State argued in its Brief to the Court of Appeals the following:

> Although Collins has claimed that, under the New York State Constitution, the Family Court lacks the jurisdiction to enforce or modify a custody or support order in a matter not referred to it by the New York State Supreme Court (Brief, pp 4-9), that claim is utterly devoid of merit, having been refuted by the express directive of the New York State Legislature (see, Family Court Act §§ 466 (c), 652 (b), (c), and by various state courts which have considered the question. Matter of Seitz v. Drogheo, 21 NY2d 181 (1967) (support award modification); Metzger v. Metzger, 133 AD2d 524 (4th Dept. 1987) (custody award modification.)
>
> Matter of Seitz, and Family Court

Act § 466(c) are only applicable to **foreign** divorce decrees. Petitioner has a New York State Supreme Court Divorce.

Matter of Seitz, states:

> 1. The Legislature had the authority under article VI (§ 7, subd. c) of the State Constitution to confer upon the Family Court the powers contained in subdivision (c) of section 466 of the Family Court Act to entertain a request to enforce or modify the provisions of a **foreign** matrimonial decree.
>
> 2. ...The right to commence a proceeding to enforce or modify the provisions of a **foreign** divorce decree in the courts of this state constitutes a new class or action or proceeding. ...Sudivision (c) of section 466 of the Family Court Act empowered the Family Court to entertain applications to enforce and modify the alimony and support provisions of **foreign decrees**. ....Since the right to commence such proceedings was not recognized at common law and could not, therefore, been exercised prior to the amendment of section 466, it should be viewed as a new class of proceeding.

Matter of Metzger, does not address the constitutionality of section 652(b) nor does it address the issue of the

State Constitution which calls referral.

Based upon Metzger, the judges would have been denied jurisdiction pursuant to CPLR § 2221.

The State has failed to provide any rational basis upon which the judges might have concluded that they had jurisdiction pursuant to FCA § 652 (b), (c). The State has also failed to state its rational in relying upon FCA § 652 (b), (c) which do not require a referral from the supreme court instead of FCA § 652 (a) which does require a referral from the Supreme Court. The reason the State refused to state its rational behind picking § 652 (b), (c) is because § 652 (a) conforms to the jurisdiction of the Family Court as specified by the New York State Constitution and subdivisions (b), (c) do not.

Senator H. Douglas Barclay, who

introduced the bill to the Senate, in a Memorandum concerning the adding subdivisions (b) and (c) to section 652 and 467 states:

> I. SUMMARY OF PROVISIONS:
>
> §§ 652 & 467 of the Family Court Act would be amended to vest jurisdiction in the Family Court in those cases where the matrimonial decree is silent as to its enforcement or modification.

The Legislature has no authority to vest jurisdiction in the Family Court as it is a Constitutional Court and therefore the Constitution must be amended to vest jurisdiction in the Family Court.

In adding subdivisions (b) and (c) to section 652 the Legislature is depriving the Supreme Court, a constitutional court, of its jurisdiction to refer matters to the family court concerning the enforcement and modification of judgments and orders of custody and visi-

tation to the Family Court. Under subdivisions (b) and (c) the Supreme Court must retain jurisdiction to prevent Family Court from having jurisdiction which contradicts the State Constitution which states that the Supreme Court must refer the matter to Family Court in order for Family Court to have jurisdiction.

The Judiciary is bound to uphold the State Constitution and the laws of the state that conform to the State Constitution. The judiciary is also bound to declare unconstitutional those laws passed by the Legislature that contradict and/or violate the State Constitution.

According to the State's argument, the Legislature has by an "express directive" taken over the jurisdiction of the Family Court from the State Constitution.

This argument by the State is utterly devoid of merit as the judges and

attorneys are fully aware that no one including the Governor, the Legislature or the Judiciary has the authority to give a judge jurisdiction over a matter that the State Constitution specifically states that he cannot hear. Therefore, any reliance upon the Family Court Act for jurisdiction over a matter for which the State Constitution has already deprived the Family Court of is a reliance upon an usurped authority by the Legislature and is not a rational basis upon which a judge can rely for judicial immunity.

Judges are not shielded by absolute immunity from declaratory or injunctive relief. Schepp v. Fremont County, Wyo., 900 F.2d 1448 (10th Cir. 1990), White v. Fleming, 522 F.2d 730 (7th Cir. 1975).

Petitioner in his complaint filed for both injunctive and declaratory relief based upon the following.

Petitioner has asked the federal court for an order granting him custody of his children based upon the continuing violation of his Constitutional rights during the Family Court proceedings and the Family Court's refusal to protect his visitation rights. He has also asked for an injunction to prevent the judges from taking further action against him in violation of his Constitutional rights.

The theory of the judiciary article of the constitution is to simplify the judicial system by reducing the number of high courts and to embed those retained so thoroughly in the fundamental law that they cannot be changed or abolished with out an amendment to the constitution. People v. Luce, 1912, 204 N.Y. 478, 97 N.E. 850. See, also, Koch v. Mayor, 1897, 152 N.Y. 72, 46 N.E. 170.

It is well settled that Family Court

is a Constitutional Court. As such, it cannot be changed or abolished without amending the Constitution. Handa v. Handa, 103 A.D.2d 794 (2nd Dept. 1984).

Petitioner argued that Section 439 of the Family Court Act was unconstitutional as it changed the composition of the family court without changing the State Constitution, It also transferred the authority vested in the duly elected supreme court judges and family court judges by the State Constitution to non-elected - non-judicial employees of the Unified Court System. N.Y.S. Const. Art. 6, § 13 (a) states the composition of the family court. The State Constitution does not authorize the creation of the hearing examiner's office to determine support or violations of support. The Constitution has specifically given that authority to the supreme court and to the family court

when referred to it by the supreme court. The men and women of the State of New York have the right to have all of their issues concerning custody, visitation and support decided by a judge who is elected by them under our Constitution and who must, therefore, answer to them. They have a corrollary right not to have such matters decided by a non-judicial employee of the Unified Court System chosen by the Chief Administrator.

Petitioner has been sentenced twice to jail and is again facing incarceration because of the determinations of a person who is not a judge which is just as repugnant as being sentenced to jail based upon court decisions and orders issued by a judge who knew he lacked jurisdiction to render his decision and orders and then being sentenced to jail by another judge who knows he lacks

jurisdiction to render a decision and knows the other judge lacked jurisdiction to render his decision.

Carella v. Collins, 144 A.D.2d 78:

> We find without merit respondents's contention that Family Court Act § 439 is unconstitutional insofar as it authorizes the transfer of Family Court's powers from Constitutionally elected Judges to non-judicial, unelected employees of the Unified Court System. N.Y. Constitution, Article VI, § 30 vests broad power in the Legislature to make procedural rules for the courts.

The Appellate Court is fully aware that the jurisdiction given to a court is not the same as the procedures that the court or judge must follow during the proceeding. Procedures a court must follow are in part dependent upon the jurisdiction of the court but the jurisdiction of a court is not dependent upon the procedures it must follow. Vesting jurisdiction in a non-judicial employee to hear matters vested in state court judges by

the Constitution is not a procedural act.

Petitioner has argued that Family Court Act §§ 449 & 451 are unconstitutional as they deprive him of equal protection of the law. Under § 449 & 451 a court order for support is retroactive back to the date of the filing of the petition. If the person responsible for paying support has under paid during the period from the time of the filing of the petition to the time of the decision, he is required to make up the difference between what is paid and what should have been paid. On the other hand, if he has overpaid he <u>is not</u> entitled to a refund or a credit towards future payments. Therefore, § 449 and § 451 are giving the person receiving the support a superior position and thereby depriving the person making the support payments of equal protection of the law. Whether or not a

judge has the discretion to modify such awards is not relevant. The issue is, as the law is written, it deprives a person paying support of his Constitutional right to equal protection of the law.

Dinwiddie v. Brown, C.A.Tex.1956, 230, F.2d 465, certiorari denied 76 S.Ct. 1041, 351 U.S. 971, holds where state officers conspire with private individuals to defeat or prejudice litigant's rights in state court, litigant is thereby denied equal protection of laws by persons acting under color of state law, and cause of action is created cognizable by federal courts under this section.

Petitioner has clearly documented that Leo Casey and Ms Palumbo have filed several support violation petitions against him that they knew contained knowingly false information. Also, his support checks have been stolen, viola-

tion petitions have been back dated, they deducted more than was required by court order even when there was over a $800.00 extra in the account, supplied Mr Morsillo with a letter containing knowingly false information and information that could not be verified for use against Petitioner in court.

Ms Carella has testified that her mother is the supervisor for the Saratoga County Data Processing Department and that her mother's department does the data processing for the Support Collection Unit.

Rankin v. Howard, 633 F.2d 844, 850:

> [13] The Supreme Court resolved the issue in Dennis v. Sparks, -- U.S.-- 101 S.Ct. 183, ..., (1980). The Court held that an immune judge's private coconspirators do not enjoy derivative immunity. at --, 101 S.Ct. at 186.
>
> [14] It follows that "[p]rivate parties who corruptly conspire with a judge in connection with such conduct are ... acting under color of

state law within the meaning of § 1983. Id at --, 101 S.Ct. at 187.

Petitioner had clearly documented that the attorneys have "joined", "co-operated with" and/or "conspired with" the judges to deprive Petitioner of his rights and that they have allowed Support Collection to illegally interfere with the case.

This Complaint is not barred by New York's three year statute of limitations.

Briley v. State of Cal., 564 F.2d 849 (1977) at 850, 855.

> 7. Where civil rights plaintiff has been injured by fraud or concealment and remains ignorant of it without any fault or want of diligence on his part the statutory limitations period does not begin to run until the discovery of the injury. 42 U.S.C.A. § 1983
>
> .....
>
> The established rule, which we apply in this case is that, where a plaintiff has been injured by fraud or concealment and remains in ignorance of it without any fault or want of diligence on his part, the statutory

> period does not begin to run until the discovery of the injury. Holmberg, supra, 327 U.S. at 397, 66 S.Ct. 582; Hilton, supra, 522 F.2d at 602; ....

The fraud in this case is the fact that the judges and the attorney's knew the Family Court judges lacked subject matter jurisdiction to render their decisions and orders and concealed it from Petitioner.

Petitioner did not discover that Family Court was without jurisdiction to enforce or modify the supreme court order pursuant to the State Constitution, the Family Court Act and case law until 1991.

Judge James awarded Ms Carella possession of the real property on April 22, 1986. It was not until September 13, 1989 when Mr Carola filed his Answering Motion to Ms Carella's Motion to Dismiss the Supreme Court complaint that Petitioner found out that Judge James had no author-

ity to award her possession of the property.

Judge Simone sentenced Petitioner to jail on January 25, 1988. It was never argued in the appeal that Judge Simone, as a Surrogate Court judge, had no authority to hear a family court matter. It wasn't until Petitioner started the federal action in 1991 that he found out.

The actions taken against Petitioner by Supreme Court Judge Plumadore and the Appellate Court Judge Casey and Mikoll have all been within the three year state of limitations period.

Except for the Violation Petition dated December 18, 1987, all the actions taken against Petitioner to prejudice or defeat his state court proceeding by Leo Casey, Ms Palumbo and the Saratoga County Support Collection have been within the three year statute of limitations.

Judge Austin was not appointed to the case until May, 1990. Judge James actions were during the period of February 1985 to May 1990.

Martin v. Merola, 532 F.2d 191 at 192 (2nd Cir. 1976) states:

> 6. Statute of limitations as to damage action under § 1983 by plaintiff's alleging that their constitutionally guaranteed right to a fair trial had been infringed by action of district attorney and his assistants in announcing to the press the arrest of plaintiffs and asserting were tied to crime families did not begin to run until the completion of the criminal trials. 42 U.S.C.A. § 1983; CPLR N.Y. 214.

The same docket number has been used throughout the family court proceedings.

Germane to the issue of when a Family Court proceeding ends is Section 451 of the Family Court Act which states:

> Continuing jurisdiction - The court has continuing jurisdiction over any support proceeding brought under this article until its judgment is completely satisfied and may modify, set aside, or vacate any order issued in the course of the proceed-

> ing, provided however, that the modification, set aside or vacatur shall not reduce or annul arrears child support accrued prior to making of an application pursuant to this section. . . .

Section 460(2.) of the Family Court Act states:

> A certified copy of the order directing the entry of a money judgment shall be entered in the office of the clerk of the county in which the proceeding was commenced....

The family court's judgment has never been completely satisfied, as the arrears have never been vacated, modified or subject to a money judgment and entered pursuant to § 460. As there has never been a final determination by Family Court, the statute of limitations has not begun to run.

Hofferber v. The First National Bank of Guyman, Oklahoma, 437 F.Supp. 788:

> It is beyond doubt that property rights are protected by the Fourteenth Amendment and violations thereof can be redressed by suit

> under 42 U.S.C. § 1983. Lynch v. Household Finance Corp., 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972); ...

Acquisition, enjoyment and alienation of property are among those basic constitutional rights protected by Civil Rights Act of 1871. 42 U.S.C.A. § 1983. Privitera v. Town of Phelps, 79 A.D.2d 1, 435 N.Y.S.2d 402. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 432, 88 S.Ct. 2186, 2199.

When Judge James awarded Ms Carella exclusive possession of non-marital real property owned by Petitioner, his mother and her husband. Judge James knew he lacked jurisdiction thus depriving them of their property without due process.

When the family court judges increased Petitioner's support and he paid the increase in support he was being denied his property without due process. Duchesne v. Sugarman, 566 F.2d 817,

824, 825 (2nd Cir. 1977) held:

> [4,5] It is beyond peradventure that "freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment". Cleveland Board of Education v. LaFluer, 414 U.S. 632, 639-40, 94 S.Ct. 791, 796,...(1974). The existence of a "private realm of family life which state cannot enter," Prince v. Massachusetts, 321 U.S. 158, 166, 64 S.Ct. 438, 442,... (1944), "has its source . . . not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition'. Moore v. City of Cleveland, 431 U.S. 494, 97 S.Ct. 1932, ... (1977)" Smith v. Organization of Foster Families for Equity and Reform, 431 U.S. 816, 845, 97 S.Ct. 2094, 2110-2111 (1977)
>
> [6] Here we are concerned with the most essential and basic aspect of familial privacy - the right of the family to remain together without the coercive interference of the awesome power of the state. This right to the preservation of family encompasses the reciprocal rights of both parent and children. It is the interest of the parent in the "companionship, care, custody and management of his or her children, Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 ... (1972), and of the children in not being dislocated from the "emotional attachments that derive from the

intimacy of daily association," with the parent. Organization of Foster Families, supra, 431 U.S. at 844, 97 S.Ct. at 2110.

This mutual interest in an independent relationship has received consistent support in the cases of the Supreme Court. "The Court has frequently emphasized the importance of family. The rights to conceive and to raise one's children have been deemed "essential", Mayer v. Nebraska, 262 U.S. 390, 399 [43 S.Ct. 625, 626, 67 L.Ed. 1042] (1923), "basic civil rights of man", Skinner v. Oklahoma, 316 U.S. 535, 541, [62 S.Ct. 1110, 1113, 86 L.Ed. 1655] (1942) and '[r]ights far more precious . . . than property rights,' May v. Anderson, 345 U.S. 528, 533 [73 S.Ct. 840, 843, 97 L.Ed. 1221] (1953)

Spencer v. Spencer, 1985, 128 Misc. 298, 488 N.Y.S.2d 565 held:

[5,6] ...In addition, the court is obligated to protect the non-custodial parents visitation rights [Weiss v. Weiss, 52 N.Y.2d 170, (1981).

[7] The right to visitation has been considered so basic that interference with visitation has been held to be an act so inconsistent with the best interests of the children as to raise a strong probability that an interfering parent is unfit to act as the custodial parent

[Entwistle v. Entwistle, 61 A.D.2d 380, 402 N.Y.S.2d 213 (2nd Dep't. 1978), app. dism. 44 N.Y.2d 851 (1978); See also Paris v. Paris, 95 A.D.2d 857, 464 N.Y.S.2d 221 (2nd Dep't.1983)...

[10] . . .

Since the effects on Lisa of a change of custody are relatively short-term and the effects of rapture of her relationship with her mother long-term, the Father's history of interference with Lisa's relationship with her mother and the probability of its continuance tips the balance in the Mother's favor. Lisa's custody must be granted to the Mother.

As documented throughout the complaint the family court judges have never taken any action to protect Petitioner's visitation rights with his children. Petitioner has been deprived of his children now for almost five years even though there has never been a petition filed with any court to limit or deny him visitation with his children. The defendants in this complaint have succeeded in severing the relationship

between Petitioner and his children while at the same time holding him liable for their support and also holding his mother liable without a hearing or a trial.

Abraham v. Abraham, 44 A.D.2d 675, 353 N.Y.S. 794 at 796:

> [1,2] While it is clear that the deprivation of visitation rights, per se, will not relieve a father of his obligation, such deprivation, when not required by some pressing concern for the welfare of the mother or child should suspend his obligations (Matter of Sawyer v. Larkin, 37 A.D. 2d 929, 326 N.Y.S.2d 270; Matter of Fleischer v. Fleischer, 25 A.D.2d 901, 269 N.Y.S.2d 270; Elkin v. Ehrens, 251 N.Y.S.2d 560; Lefkowitz v. Lefkowitz, 186 N.Y.S.2d 925.

Good v. Stevenson, 448 N.Y.S.2d 981:

> [1,2] Although a child's name may be changed if it is in his best interest, there must be a compelling reason to make such a change, Mtr of Fein, 51 Misc.2d 1012, 274 N.Y.S.2d 547 (1966). Embarrassment from having a different name than the mother and inconvenience therefrom to the mother have been held to be insufficient basis for changing a child's name, In re Appl. of Seif, supra. ..

> The issue before the court is whether the respondent is entitled to have his support obligation suspended because the petitioner already unilaterally changed the children's surname by court order without notice to him. The court finds that the facts of this case warrants a suspension of respondent's support obligation. It is clear to the court that petitioner has succeeded in severing the father-son relationship that respondent could have with his children by having their names changed unilaterally and by effectively denying visitation as discussed supra. Nevertheless she seeks continued support for the children from their natural father. This court finds that respondent has proved his affirmative defenses to the support petition. Therefore, the order of support is hereby suspended.

As there has never been a petition filed with any court to limit or deny Petitioner visitation with his children and there has never been a reason given why he cannot see his children it must be concluded that there is no compelling reason for Ms Carella to deny him visitation. The family court is also aware that that Ms Carella has unilaterally changed

the children's surname to Carella.

Roe v. Borup, D.C.Wis.1980, 500 F.Supp 127, 130 held that a complaint alleging that guardian ad litem appointed for child was involved in improperly depriving parents of custody of their child without a hearing states a cause of action under this section. The Court held:

> Deprivation of child custody without a court hearing has been held to state a cause of action under Section 1983 for a procedural due process violation. Duchesne v. Sugarman, 566 F.2d 817 (2d Cir. 1977)..

Mr Mills was appointed by Judge Austin to be law guardian for Petitioner's three children on May 25, 1990. Mr Collins notified the family court that Mr Mills notified him after the May 25, 1990 hearing that he would be seeing less of his children even though he had been denied visitation for 2 years.

When Petitioner attempted to see his children in October, 1990, Mr Mills left

the following message on Petitioner's answering machine:

> "I am trying to reach a Mr Charles Collins. This is attorney Doug Mills. My phone number is 587-0559. I do not, I repeat do not want you to exercise visitation this weekend with your children until we go to Family Court. Ahhh, that would be my recommendation. Thank you."

Mr Mills then followed up the phone message by sending the following letter dated October 3, 1990:

> Please be advised that I do not think it is in the children's best interest to see you until such time as we appear in Family Court and have a discussion regarding your visitation with your children.

Ms Carella also sent a letter on October 3, 1990 stating:

> Pursuant to my telephone conversation with Douglas Mills, Esq., our children's law guardian, I am denying you visitation until there is a court order in effect directing me of the kind.

Ms Carella and Mr Mills are both fully aware that there is a Supreme Court order in existence directing her as to

Petitioner's visitation rights. There is also a family court order which Judge James lacked jurisdiction to render.

On October 9, 1990 Petitioner filed a Violation of Visitation and an Order to Show Cause to direct Mr Mills to state why it is not in the best interests of the children to see Petitioner and to hold Mr Mills and Ms Carella in contempt of a court order for violating Petitioner's visitation rights. Judge Austin has refused to take any action on Petitioner's behalf. Petitioner has a Constitutional right to know why he cannot see his children.

New York State Social Services Law § 424 mandates that Child Protective Services is to begin an investigation within 24 hours which shall include an evaluation of the environment of the child named in the report and within seven (7)

days are to file a written report of the preliminary investigation.

In August 1990, two (2) child abuse report were filed concerning Petitioner's three children which stated:

> August 15, 1990 - Everett had bruises 2 months ago on his back (approximately 8 bruises different locations of the back). Source feels that Cary punches Everett because he disciplines Everett and has "kicked his ass". Child is scared of Cary. Mother verbally abuses children; mother also hits children.
>
> Add. Info. SOURCE REQUESTS CONTACT.
>
> August 28, 1990 - Mother and boyfriend smoke pot in front of the children to the point mother and parental substitute unable to supervise children. Mother and boyfriend have left children alone overnight and for periods of time up to a week. This has reportedly occurred for a long period of time. Mother has hit children at times for various reasons. Children forbidden to contact relatives are described as isolated. Reportedly there is a lot of hostility, anger and profanity in the home. Guardianship is questioned.

As documented in the Complaint, Ms Carella refused to allow the children to

be interviewed without her being present, the children were not seen or interviewed until September 19, 1990 over a month after the first report was made. When Petitioner went to Judge Austin on September 12, 1990 concerning these reports, Judge Austin refused to take any action to protect the children and to have them interviewed away from the mother and boyfriend. The children were interviewed with both the mother and the boyfriend present. I would point out to the Court that the person who filed the first report gave their name and asked to be contacted about the allegations. Also, a teacher, a brownie troop leader, the boyfriends brother and his girlfried all testified about Ms Carella's neglect of the children and that she was not living with them. Transcript was an exhibit contained in complaint.

CONCLUSIONS

The Petitioner has amply demonstrated the violations of his Constitutional Rights under Civil Rights §§ 1983 and 1985 enacted pursuant to constitutional mandate and in light of the clear rulings of the Supreme Court regarding judicial immunity and the other issues raised by Petitioner.

Petitioner, Charles E. Collins, III, prays this court to grant certiorari, reverse the decision holding the Respondent Judges have immunity for their actions and finding that Petitioner's Constitutional rights have been violated by those acting under color of state law.

Respectfully submitted,

Charles E. Collins

CHARLES E. COLLINS, III
Petitioner - Pro se
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(813) 786-4721

APPENDIX

Exhibit 1 (90-CV-1111)	U.S. District Court Order Signed 10/25/90r Filed 10/26/90
Exhibit 2 (90-CV-1352)	U.S. District Court Order Signed 2/26/91 Filed 2/27/91
Exhibit 3 (91-CV-0138)	U.S. District Court Order Signed 6/13/91 Filed 6/18/91
Exhibit 4 (91-7700)	U.S. Court of Appeals Second Circuit, Order Signed 2/27/92 Entered 2/27/92
Exhibit 5 (91-CV-0349)	U. S. District Court Order Signed 6/14/91, Filed 6/17/91
Exhibit 6 (91-CV-0349)	U.S. District Court Order Signed 8/6/91 Filed 8/6/91
Exhibit 7 (91-CV-0349)	U.S. District Court Order signed 8/9/91 Filed 8/12/91
Exhibit 8 (91-7703)	U.S. Court of Appeals Second Circuit, Order Signed 2/27/92 Entered 2/27/92
Exhibit 9	Constitutional Provisions and Statutes

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

CHARLES E. COLLINS, III Plaintiff	)	
v.	)	90-CV-1111
ARLENE COLLINS CARELLA, JUDGE L. FOSTER JAMES, JUDGE STEPHEN A. FERRADINO, NICHOLAS D. MORSILLO DOUGLAS C. MILLS Defendants	)	Filed October 26, 1991

ORDER

28 U.S.C. §§ 1441(a) & 1446(a) authorize removal to federal court only by defendants "and only on the basis of claims brought against them and not on the basis of counter claims asserted by them." Ballards Service Center, Inc. v. Transue, 865 F.2d 447, 449 (1st Cir. 1989). To the extent plaintiff/petitioner Charles E. Collins, III is seeking to remove state court proceedings in which he is the plaintiff/petitioner, such removal is impermissible under the federal removal statute as only defen-

dants may remove a state court action. To the extent petitioner Collins is seeking to remove a state court proceeding in which he is a defendant/resposnsdent, for example Arlene Collins Carella v. Charles E. Collins, III, such removal also is not permissible in this case. The petition of Arlene Collins Carella is simply one for failure to pay support. It does not raise any federal questions against Collins and does not involve citizens of different states.

Therefore, it is hereby ordered that this action is remanded to New York State Family Court, County of Warren, Judge John Austin.

It is So Ordered.

Dated: October 25, 1990
Syracuse, New York.

/s/
HOWARD G. MUNSON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

CHARLES E. COLLINS, III Plaintiff	)	
v.	)	90-CV-1352
ARLENE COLLINS CARELLA, NICHOLAS D. MORSILLO, DOUGLAS C. MILLS, NICHOLAS D. MORSILLO LAW FIRM Defendants	)	Filed February 27, 1991

ORDER

In response to a Saratoga County Family Court proceeding charging a violation of support order commenced by plaintiff's ex-wife, defendant Arlene Carella, unsuccessfully sought to be removed to federal court, see October 26, 1990 Order of Judge Munson in 90-CV-1111, plaintiff has filed the present action purporting to assert conspiracy claims under 42 U.S.C. § 19883 and 42 U.S.C. § 1985. Before the court is plaintiff's

request for a temporary restraining order seeking to enjoin the proceedings scheduled for February 7 in Family Court; defendants Nicholas Morsillo and the Nicholas Morsillo and The Nicholas Morsillo Law Firm have moved for dismissal of the action and for sanctions. Defendant Douglas Millss joins in on these motions. Plaintiff's request for assigment of counsel has been denied.

Upon review of the file, the court determines that the complaint is patently frivolous -- at the very least, State action or conduct fairly attributable to the State is lacking for any claim, under section 1983, see Dahlberg v. Becker, 748 F.2d 85, 89 (2d Cir. 1984), cert. denied, 470 U.S. 1084 (1985), and no race-based or class-based invidiously discriminatory animus is alleged to underlie the vaguely asserted conspiracy, see United Brother

hood of Carpenters & Joiners of America, Local 610, AFL-CIO v. Scott, 463 U.S. 825, 828-834, 103 S.Ct. 3352, 3356-3359 (1983) - - and therefore dismisses the complaint in its entirety as against all the named defendants.

Under the authority of Maduakolam v. Columbia University, 866 F.2d 53 (2d Cir. 1988), the court, in the exercise of its discretion in matters brought by pro se litigants, declines to award sanctions. See Id. at 56.

Needless to say, plaintiff's request for a TRO and a preliminary injunction, relief sought and denied by the court on February 4 in Collins v. Austin, 91-CV-138, a companion case, is denied as academic.

Dated at Binghamton, New Yoek
February 26, 1991

/s/
Thomas J. McAvoy, U.S.D.J.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

CHARLES E. COLLINS, III Plaintiff	)	
v.	)	91-CV-0138
JUDGE JOHN AUSTIN, et al. Defendants	)	Filed June 18, 1991

ORDER

Following on the heels of a companion case commenced by plaintiff alleging conspiracy under 42 U.S.C. §§ 1983 and 1985 (Collins v. Carella, 90-CV-1352), plaintiff as commenced the present action asserting conspiracy under 42 U.S.C. § 1983 also pertaining to matters in Saratoga County Family Court. Plaintiff seeks some $18 million in addition to injunctive relief directed at Judge Austin and Leo Casey, custody of his children and appointment of an attorney other than Mr. Catalfimo with respect to Family Court

matters.

In February 1991, this court dismissed the complaint in Collins v. Carella, as being patently frivolous: State action or conduct fairly attributable to the State was lacking for any claim under 42 U.S.C. § 1983, and no race- or class-based inviduously discriminatory animus was alleged to underlie the vaguely asserted conspiracy. As for the present action, the court on February 4 denied plaintiff's application for an injunction against Judge John Austin and the Family Court of the Unified Court System of New York seeking to enjoin Family Court proceedings scheduled for February 7, 1991 regarding plaintiff's alleged violation of a support order. On March 28, Plaintiff commenced yet another action, Collins v. Unified Court System of New York, et

al., 91-CV-349, by way of filing a 281-page complaint with 155 exhibits purporting to allege 105 causes of action, seeking a variety relief under 42 U.S.C. § 1983 including some $615 million in damages. That action is the subject of cross motions noticed for June 10, 1991. The present action is before the court on motions by various defendants seeking dismissal of the complaint as against them. Specifically, defendants Catalfimo and Catalfimo & Bulger seek dismissal for failure to state a claim and defendants Judge John Austin and the Family Court of the Unified Court System of New York seek dismissal for inadequate service and for failure to state a valid and cognizable claim. Defendant Douglas Mills has submitted an "Answering Affidavit" in which he states that he joins the motions of the other moving defendants and also

seeks on his own behalf to have the action dismissed as against him for lack of subject matter jurisdiction and for failure to state a legally cognizable cause of action; he also asserts the affirmative defense of res judicata as a result of the dismissal of the action 90-CV-1352 and moves for relief thereunder. Defendant Leo Casey, although served with the summons and complaint, has not moved for dismissal. The motions were originally scheduled for April 8; they were adjourned to ay 31 and then, at the request of one of the defendants, to June 10. At no time has plaintiff who prepared a two-inch thick complaint (an 18-page document with some 29 exhibits), seen fit to respond to the motions, a failure to act fully warranting granting the relief sought by defendants.

In any event, review of the com-

plaint reveals all to readily that this action, having its genesis in a July 1981 divorce between plaintiff and Arlene Collins Carella and arissing out proceedings flowing therefrom (see Matter of Carella v. Collins, 144 A.D.2d 78 (3d Dep't 1989) for a recitation of part of the history of the dispute between plaintiff and his ex-wife), including ongoing Family Court proceedings in Warren County Family court, is patently frivolous land must be dismissed as against all the named defendants.

The "conspiracy" to deprive him of his rights by the judges, attorneys, and other participants in the Family Court proceeding is a direct outgrowth of, among other things, his dissatisfaction with the results so far in the ongoing Family Court proceedings. Such mindlessly asserted and unsubstantiated allega-

tions of conspiracy are insufficient to state a claim under 42 U.S.C. § 1983. See San Filippo v. United States Trust Company of New York, Inc., 737 F.2d 246, 256 (2d Cir. 1984), cert. denied, 470 U.S. 1035 (1985). Plaintiff's other claims that Judge Austin has failed to inform plaintiff of his constitutional right to counsel and has violated various State statutes, that plaintiff has been denied his right to due process and to equal protection, that he has been maliciously prosecuted, that the Family Court proceeding is retaliation for the exercise of his 1st amendment right to freedom of speech by virtue of his publishing the "Saratoga Star," included as an exhibit to his complaint, and that various State laws are unconstitutional either fail to state a valid cause of action under § 1983, are frivolous, or

are barred by the 11th amendment, see Kentucky v. Graham, 473 U.S. 159, 105 S.CT. 3099 (1985); Pennhurst State School Hospital v. Halderman, 465 U.S. 89, 104 S.Ct. 900 (1984); Edleman v. Jorden, 415 U.S. 651, 94 S.Ct. 1347 (1974), or by the doctrine of absolute judicial immunity, see Maestri v. Zook, 860 F.2d 50 (2d Cir. 1988) cert. denied 109 S.Ct. 1132 (1989).

Accordingly, defendants motions are granted and the entire complaint is dismissed as against all named defendants.

Dated at Binghamton, New York
June 13, 1991

/s/
Thomas J. McAvoy, U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit held at the United States Courthouse in the City of New York, on the 27th day of February, one thousand nine hundred and ninety-two.

P R E S E N T:

Hon. James L. Oakes,
Chief Judge,
Hon. Richard J. Cardamone,
Hon. Lawrence W. Pierce
Circuit Judges.

Charles E. Collins, III Plaintiff-Appellant,	)	
v.	)	91-7700
Judge John Austin, et al., Defendants- Appellees.	)	

O R D E R

Charles E. Collins, III appeals from a judgment of the United States District Court for the Northern District of New York, Thomas J. McAvoy, Judge, dismissing Collins' claims under 42 U.S.C. § 1983 (1988). For the reasons set forth below, we affirm.

Collins argues that the district court erred by dismissing his complaint, which alleged that the defendants conspired to infringe on his rights in violation of 42 U.S.C. § 1983 (1988). Collins' section 1983 claims against Judge Austin are barred by the doctrine of judicial immunity. See Stump v. Sparkman, 435 U.S. 349, 362-64 (1978). With respect to Collins' remaining claims, we agree with the district court that his allegations are insufficient to state a claim under section 1983. See, Barr v. Abrams, 810 F.2d 358, 362 (2d Cir. 1987). Accordingly, Collins' arguments are unavailing.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court be and it hereby is AFFIRMED.

/s/
JAMES L. OAKES, Chief Judge

/s/
RICHARD J. CARDAMONE, Circuit Judge

/s/
LAWRENCE W. PIERCE, circuit Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

CHARLES E. COLLINS, III Petitioner	)	
v.	)	91-CV-0349
UNIFIED COURT SYSTEM OF NEW YORK, et al. Defendants	)	Filed June 17, 1991

ORDER

Following Collins v. Carella (90-CV-1352) and Collins v. Austin (91-CV-138), both of which have been dismissed, plaintiff commenced the present action, arising out of the same sets of events as the foregoing actions, by way of filing a 281 page complain with 155 exhibits purporting to set forth some 105 causes of action and seeking over $600 million for alleged violations of his constitutional rights. The present action names all the prior defendants in addition toa host of

other judges, court personnel, attorneys and law firms.

All the defendants have been served and have moved to dismiss the action. The moving defendants also seek Rule 11 sanctions. Plaintiff has cross-moved for certain relief. The action is dismissed in its entirety as against all defendants and the motion for Rule 11 sanctions is granted

It is clear that plaintiff is unhappy with the results in the various Family Court proceedings, most of which were not appealed. Apparently just prior to his foray into federal court, Family Court Judge John Austin rejected plaintiff's attempt to have certain matters reinstated, the judge finding that the only issues pending were Arlene Carella's petition for enforcement of child support orders and a petition plaintiff intended

to file regarding visitation. The essence of plaintiff's present complaint, like his prior pleadings, is that there must be a conspiracy against him because he lost. Conclusory, unsubstantiated allegations about fraud, coverups, false testimony, intentional misconduct and assorted unsavory behavior do not suffice to state a claim under 42 U.S.C. § 1983. As the Second Circuit has held, "complaints relying on the civil rights statutes are insufficient unless they contain some specific allegations of fact indicating a deprivation of rights, instead of a litany of general conclusions that shock but have no meaning." Barr v. Abrams, 810 F.2d 358, 363 (2d Cir. 1987). Reading plaintiff's complaint, having knowledge of plaintiff's prior actions, it is clear to the court that he intends his filings to have

shock value; they are legally meaningless, and the court cannot permit plaintiff's vendetta against all those with whom he has come into contact as a result of the domestic relations and Family Court matters to proceed any further. Ordinarily, the court might be inclined to dismiss this action without prejudice to permit plaintiff an opportunity to comply with Rule 8 by filing a shorter and more concise statement of his case. Under the circumstances, the court will not permit plaintiff that option. The complaint is frivolous; the court has seen essentially the same allegations made in the prior two suits; additionally, much of the complaint is barred by virtue of the applicable limitations period (three years), or by the 11th Amendment or by the doctrine of absolute judicial immunity.

The present suit, merely the latest installment in plaintiff's battle against those he believes wronged him, constitutes nothing more than an attempt to harass; plaintiff has engaged in vexatious and baseless litigation fully aware that his claims are destined to fail. See Complaint at 279, ¶ 1034 claims are destined to fail. (plaintiff recognizing that his prior action, 91-CV-138, will be dismissed "as he failed to state a recognizable cause of action in the complaint"). Under Rule 11, notwithstanding plaintiff's pro se status, sanctions are warranted. See, O'Malley v. New York City Transit Authority, 896 F.2d 704, 709 (2d Cir. 1990). Moreover, given the materials plaintiff has submitted to the court, evidencing a substantial expenditure of time and money on his part, no special

circumstances exist which would lead this court to excuse plaintiff's conduct, See, Maduakolam v. Columbia University, 866 F.2d 53, 56 (2d Cir. 1988); the complaints and the roster of defendants keep getting longer and the relief sought steadily increases (presently, to the preposterous amount of $615 million).

The question arises, however, as to what the appropriate sancrion might be. Defendants, who have had to waste a tremendous amount of time and effort responding to plaintiff's baseless, and at times scurrilous, attacks, in addition to monetary sanctions, seek an injunction barring plaintiff from filing any further actions without prior leave of court. Although there is support for such extraordinary relief, the court is disinclined to award it here at the present time.

Monetary sanctions will be imposed based on the number of hours reasonable expended by each defendant's attorney in responding to the present complaint multiplied by a reasonable hourly fee. Counsel for defendants are directed to file an affidavit setting forth the appropriate figures together with a proposed order within 30 days of the date of this order.

Dated at Binghamton, New York
June 14, 1991

/s/
Thomas J. McAvoy, U.S.D.J.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

CHARLES E. COLLINS, III Petitioner	)	
v.	)	91-CV-0349
UNIFIED COURT SYSTEM OF NEW YORK, et al. Defendants	)	Filed August 6, 1991

ORDER

Following Collins v. Carella (90-CV-1352) and Collins V. Austin, (91-CV-138), both of which have been dismissed, plaintiff commenced the present action, arising out of the same sets of events as the foregoing actions, by way of filing a 281-page complaint with 155 exhibits purporting to set forth some 105 causes of action and seeking over $600 million for alleged violations of his constitutional rights. The present action names all the prior defendants in

addition to a host of other judges, court personnel, attorneys and law firms.

Following service, all the defendants moved successfully to have the action dismissed. The moving defendants also sought Rule 11 sanctions. The court granted that relief in the same order dismissing the action. Counsel for defendants have submitted the requested affidavits.

The monetary sanctions imposed against plaintiff based on the number of hours reasonably expended by each defendant's attorney in responding to the present complaint multiplied by a reasonable hourly fee are as follows.

(1) $1080 for 12 hours of work to:

Robert Abrams Mary Ellen Clerkin
Attorney General
State of New York
The Capitol
Albany, NY 12224
For defendants

Unified Court System,
Judges James, Ferradino
Amyot, Simone, Casey,
Mikoll, Plumadore and Austin,
Hearing Examiner Warner,
Mary Ellen Clerkin,
Susan P. Janczak, and
Saratoga County Family Court

(2) $1781.25 for 14.25 Hours of work to:

James Dixon
The Nicholas D. Morsillo Law Firm
723 State Street
Schenectady, NY 12307
For defendants Law Firm,
Nicholas D. Morsillo and
Arlene Carella

(3) $1725 for 15 hours of work to:

Courtney W. Hall - Harry W. Seibert, Jr.
Saratoga County Attorne
40 McMaster Street
Ballston Sap, NY 12020
For defendants Leo M. Casey,
Arlene M. Palumbo and
Saratoga County Support Collection Unit

(4) $1350 for 15 hours of work to:

Scott Bush
Roche, Corrigan, McCoy & Bush
The Wilem Van Zandt Building
36 South Pearl Street
Albany, NY 12207
For defendants hilip H. Gitlen,
John P. Stockli, Kathryn Hart and
Whiteman Osterman & Hanna

(5) Missing from decision.

(6) 2000.00 for 20 hours of work to:

Paul W. Martineau
Frost & Donohue
68 Second Street
Troy, 12180
For defendants Jerome K. Frost and
Frost & Donohue

(7) $950 for 9.5 hours of work to:

Dianne N. Freestone
Grogan, Pentkowski,Pastore &
Freestone, P.C.
P.O.Box 425
Route 146
at Crestmont Drive
Clifton Park, 12065
For defendants
Dianne N. Freestone and
Grogan, Pentkowski, Pasto re & Freestone

Plaintiff is directed to issue a certified check in the amount to each of the attorneys listed above within 45 days after the entry and service of this order.

Dated Binghamton, New York
August 6, 1991.

/s/
Thomas J. McAvoy, U.S.D.J.

United States District Court
Northern District of New York
225 Federal Building
15 Henry Street
Binghamton, New York 13902

August 9, 1991

Charles E. Collins III
108 Brunswick Road
Troy, New York

RE: Collins v. Unified Court System of N.Y., et al 91-CV-349

Dear Mr. Collins

I am in receipt of your notice of motion dated August 8, 1991 seeking reconsideration of my June 17, 1991 Order. The motion is untimely and the Clerk of this Court is hereby directed to return those papers to you. Your motion papers are dated June 8, 1991. Local Rule 10(m) mandates that a motion for reconsideration be made within ten (10) days of the order.

You submitted a prior motion for a stay of my order dated June 17, 1991.

Those motion papers were dated June 1, 1991 and I denied that motion by order dated August 1, 1991.

There is currently no action pending before the Court.

By copy of this letter/order I am directing the Clerk's Office of the Northern District of New York to accept no further letters, documents or papers for filing and to accept no further application of any kind or nature from you until you have complied with my order dated August 6, 1991.

IT IS SO ORDERED.

Very truly yours,

/s/
Thomas J. McAvoy
District Court Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit held at the United States Courthouse in the City of New York, on the 27th day of February, one thousand nine hundred and ninety-two.

P R E S E N T:

Hon. James L. Oakes,
Chief Judge,
Hon. Richard J. Cardamone,
Hon. Lawrence W. Pierce
Circuit Judges.

Charles E. Collins, III Plaintiff-Appellant,	)	
v.	)	91-7703
Unified Court System of New York, et al., Defendants- Appellees.	)	

O R D E R

Charles E. Collins, III appeals from a judgment of the United States District Court for the Northern District of New York, Thomas J. McAvoy, Judge, dismissing all of Collins' claims and granting

defendants' motion for Rule 11 sanctions. For the reasons set forth below, we affirm.

Collins argues that the district court erred by dismissing his complaint alleging violations of 42 U.S.C. § 1983 (1988) and by imposing sanctions. In this complaint, Collins essentially claims that judges, hearing officers, lawyers and others violated and conspired to violate his constitutional rights in connection with a series of New York State proceedings stemming from a 1981 divorce.

Collins' section 1983 claims against judges are barred by the doctrine of judicial immunity. See Stump v. Sparkman, 435 U.S. 349, 362-64 (1978). With respect to Collins' remaining claims, we agree with the district court that they fail to allege specific facts

sufficient to indicate that a deprivation of rights has occurred. See, Barr v. Abrams, 810 F.2d 358, 362 (2d Cir. 1987). Finally, we believe that the circumstances warranted the district court's imposition of sanctions. See, generally O'Malley v. New York City Transit Authority, 896 F. 2d 704, 709 (2d Cir. 1990). Accordingly, Collins' arguments are unavailing.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court be and it hereby is AFFIRMED.

/s/
JAMES L. OAKES, Chief Judge

/s/
RICHARD J. CARDAMONE, Circuit Judge

/s/
LAWRENCE W. PIERCE, circuit Judge

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. CONST. Amendment One

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. CONST. Amendment Five

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy

of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amendment Six.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy trial by an impartial jury of the State and district wherein the crime shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST. Amendment Fourteen.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. Section 1983.

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof

to the deprivation of any rights, privileges, or immunities secured by the Constitution an laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. Section 1985.

Conspiracy to interfere with civil rights.

(2) If two or more persons in any state or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of having so attended or testified, or to influence the verdict, presentment, or

indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of laws, or to injure him or his property for lawfully enforcing or attempting to enforce, the right of any person, or class of persons, to equal protection of the laws;

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the

premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State of Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or

advocacy; in any case of conspiracy set forth in this section, of one or more persons engage therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.